IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 225 of 1995

Reserved on: 7.12.2007

Date of decision: 17.12.2007.

Hira Singh & Ors. … Appellants

Versus

Rameshwar Dass … Respondent

Coram :

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting?[1] No.

For the appellants: Mr. Neeraj Gupta, Advocate.

For the respondent: Mr. Tek Chand Sharma, Advocate.

V.K. Ahuja, J. :

This is an appeal filed by the appellants against the judgment and decree of the Court of learned Additional District Judge, Shimla, dated 24.4.1995, vide which it affirmed the judgment and decree passed by the Court of learned Sub Judge Ist Class (3), Shimla, dated 18.1.1993.

Briefly stated the facts of the case are that a suit for permanent prohibitory injunction was filed by the respondent as plaintiff as against the appellants hereinafter referred to as the defendants. It was alleged that the plaintiff is owner in possession of the land comprised in Khasra Nos. 54/1 and 54/2 measuring 10 Bighas, situated in Mauza Anji, Tehsil and District Shimla. The plaintiff alleged that this land was allotted to him by Gram Panchayat, Rampur, by issuing Patta on

[1]Whether reporters of Local Papers may be allowed to see the judgment? Yes.

30.9.1973. The plaintiff alleged that after allotment of land on Patta he took over the possession of the suit land, improved the nature of the suit land by building a house and a cow shed and defendants have no concern with the suit land, though they are in joint possession of the remaining part of Khasra No. 54. The plaintiff alleged that the defendants were illegally trying to interfere in the peaceful possession of the plaintiff over the suit land. Hence, the suit for permanent prohibitory injunction filed by the plaintiff.

Defendants took up the plea that the plaintiff in collusion with lower revenue staff obtained the Patta of the suit land from Gram Panchayat, though they denied that any Patta was issued in favour of the plaintiff. They also challenged the authority of Gram Panchayat to give the suit land on Patta to the plaintiff and pleaded that the document of Patta was forged document. They also denied that the plaintiff was owner in possession or had made improvement over the suit land.

The suit was tried by the learned trial Court who came to the conclusion that the plaintiff has established his possession over the suit land since 1973 on the basis of Patta issued by the Gram Panchayat, Rampur in 1973 and had made improvement over the suit land and he was entitled to the relief of injunction against the defendants restraining them from causing any sort of interference over the suit land.

On appeal, those findings were upheld by the learned first Appellate Court, which dismissed the appeal filed by the appellants/defendants.

I have heard the learned counsel for the parties and have also gone through the record of the case.

The main submissions made by the learned counsel for the appellants were that the application filed by the appellants under Order 41 Rule 27 C.P.C. was wrongly rejected by the learned first Appellate Court. By the said application, the appellants wanted to prove that the plaintiff was minor at the time when the land was allotted to him and wanted to summon the record from the Panchayat in regard to issuance of Patta alleging that there were cuttings on Patta placed on the Court's file. The application was also moved for proving original resolution from the proceedings of the concerned Panchayat and these documents were considered material by the appellant. In the grounds of appeal, this point was also taken by the appellants that their application for additional evidence under Order 41 Rule 27 C.P.C. was wrongly rejected by the learned first Appellate Court and, therefore, the case deserves to be remanded.

The appeal was admitted on substantial questions of law and the main question was as to whether the application for additional evidence was wrongly rejected and a substantial question of law was also formulated as to whether the lease granted by the Panchayat was required to be scrutinized on enforcement of the Himachal Pradesh Village Common Lands Vested and Utilization Act.

During the course of arguments the fact that the plaintiff was in possession of the land in question allegedly allotted by the Panchayat by way of resolution and by issuance of Patta whether rightly or wrongly was not disputed by the learned counsel for the appellants. There is also no controversy in regard to the relief granted by the learned trial Court restraining the defendants/appellants from interfering in possession of the plaintiff over the suit land so allotted to him by the

Panchayat. The case has already taken about 18 years to reach this stage from the date when the suit was instituted on 29.8.1989. During the course of arguments, the learned counsel for the appellants admitted that according to the provisions of the H.P. Village Common Lands Vested and Utilization Act, 1974, the Collector under the provisions of Section 4 of the Act can call for the record and he is required to make an enquiry to satisfy himself as to whether the leases have been made on behalf of the State and in case the lease had been obtained by fraud or concealment of facts or is detrimental to the interest of the estate right-holders, he shall cancel such a lease and such person shall be liable to ejectment under the provisions of the Act. It is also clear from a proviso to Section 4 of the Act that no order shall be passed by the Collector without affording an opportunity of being heard to the parties to the lease, contract or agreement. In view of the fact that vital questions have been raised by the appellants as to the entitlement of the plaintiff at the time of sanction of Patta in his favour that he was a minor and as such, was incapable of cultivating the land and that no Patta was issued by the Panchayat in view of the resolution passed by them and for consideration of these questions, I am not inclined to remand the case to the trial Court or learned Appellate Court for taking fresh evidence and consider these pleas which were raised by the appellants in application under Order 41 Rule 27 C.P.C. However, it was submitted by the learned counsel for the appellants during the course of arguments that he will be satisfied in case the appellants are allowed to raise these points before the Collector and permitted to be heard and produce evidence in that regard when the proceedings are initiated by the Collector under Section 4 of the H.P. Village Common Lands Vested and

Utilization Act, 1974. To these propositions learned counsel for the respondent prima facie had no objection and keeping in view the fact that the case is not liable to be remanded for taking such evidence fresh and proceedings have to be initiated by the Collector under Section 4 of the Act for considering the lease in favour of the plaintiff/respondent, I am of the opinion that the ends of justice will be met in case the appellants are permitted to be heard and lead evidence in regard to these questions regarding entitlement of the plaintiff to the allotment of Patta if he was minor and as to whether any resolution was passed by the Panchayat and Patta was issued or not and the validity of the Patta which has to be considered by the Collector, all these questions can be decided by him in accordance with law. Therefore, the appeal filed by the appellants is dismissed and the findings of both the Courts below are affirmed and the appellants are restrained from interfering in possession of the plaintiff over the suit land subject to the condition that the appellants shall be permitted to take these pleas before the Collector in the proceedings to be started under Section 4 of the Act. The appellants are at liberty to move an application before the Collector for initiating proceedings under Section 4 of the Act, if not initiated and to raise their pleas before him as mentioned above. The appeal filed by the appellants/defendants is dismissed accordingly since there is no merit in the same. However, the parties are left to bear their own costs. Decree sheet be prepared accordingly.

(V.K. Ahuja),
Judge

December 17, 2007
(BSS)